

⁷In *re* Illinois Bell Telephone Company Proposed Introduction of a Trial of Ameritech's Customers First Plan is Illinois, Dkt. No. 94-0086, slip op. at 97 (Ill. Commerce Comm'n, Apr. 7, 1995) [hereinafter "*ICC order*"] [Appendix, Tab 7].

⁸A *Blueprint for Action*, *supra* note 1, Tab 3 at 2 [Appendix, Tab 1]. A similar telephone survey was conducted in January 1994, by First Market Research Corporation, for a study sponsored by AT&T, MCI, and CompTel. That survey found that in the absence of number portability, the number of respondents interested in changing to a cable TV company for local telephone service in response to a 20% discount fell from 32.8% to 22.6%. Corresponding figures for a 10% discount and for no discount were a drop from 18% to 12.6% and from 8.7% to zero, respectively. Economics & Technology, Inc., & Hatfield Associates, Inc., The Enduring Local Bottleneck 108-10 (February 1994) [Appendix, Tab 8].

⁹Initially, the Trial Territory would consist of the portion of the Chicago LATA that is located in the state of Illinois and the Grand Rapids LATA in the state of Michigan. The two LATAs could begin their interexchange trials at different times, and the Trial Territory could have eventually be expanded to include other portions of those two states (but only those two states) if those portions met the competitive standards set out in the proposed order.

¹⁰Regulatory consideration of such issues is already well underway in the trial states. In Michigan, the Michigan PSC adopted on an interim basis a pricing scheme for unbundled loops that was proposed by City Signal, a CAP which in 1994 was granted a license to provide local service in the Grand Rapids LATA. Under the interim scheme, Ameritech will charge City Signal \$8 for a residential loop and \$11 for a business loop. The Commission will further address these issues in an upcoming generic proceeding, to commence June 1, 1995, and to be completed no later than nine months thereafter. *In the matter of the Application of City Signal, Inc., for an Order Establishing and Approving Interconnection Arrangements with Ameritech Michigan*, Case No. U-10647, at 85-95 (Mich. Pub. Serv. Comm'n, Feb. 23, 1995) [hereinafter "*City Signal Order*"] [Appendix, Tab 9].

In Illinois, the Illinois Commerce Commission heard extensive testimony on Ameritech's proposed pricing of unbundled loops and ports, disapproved certain aspects of that pricing, and required that Ameritech file new tariffs to ensure that the sum of prices for unbundled network functions not exceed the price of bundled functions and to reduce and equalize the contribution that those prices would make to common costs. *ICC Order*, *supra* note 7, at 60-61 [Appendix, Tab 7].

¹¹The issue of "sub-loop unbundling" is dealt with in similar fashion. AT&T and others have contended that merely unbundling loops from ports does not go far enough. Instead, AT&T contends that local service should be unbundled into at least twelve basic network elements: distribution, concentration, feeding, end office switching, dedicated line transport, common transport, tandem switching, databases used in signaling, packet switching of signaling from the originating central office, packet switching of signaling at the destination, links from the packet switches to data processors and storage points, and operator services. Affidavit of Lawrence A. Sullivan, submitted by AT&T in its Opposition to Original Proposal, at 29-30 (filed with the Department of Justice on Feb. 15, 1994) [Appendix, Tab 10]. Advocates for this position argue, for example, that a provider of personal communications services ("PCS") might be able to provide a witness connection from the home to a neighborhood node, and then use Ameritech facilities to get from the neighborhood node to the central office. Testimony of Dr. Mark T. Bryant on behalf of MCI before the Illinois Commerce Commission, at 10-11 (Dkt. No. 94-0048, Aug. 8, 1994) [Appendix, Tab 11]. Ameritech responds that such an approach could lead to the uneconomic stranding of significant amounts of its investment, to no real purpose since the facilities can be made available to competitors on a nondiscriminatory basis and since continued use of Ameritech facilities whose costs are already sunk would be in the interests of consumers. The proposed order does not require sub-loop unbundling, but makes clear that this resolution is without prejudice to the power of a state to require such further unbundling. (Proposed Order, ¶1(m).) Moreover, it makes clear that the Department may consider the competitive effects of such unbundling (or lack thereof). (*Id.*).

¹²State law or regulatory requirements intended to benefit competition in the intraLATA toll market may require Ameritech to implement intraLATA toll dialing parity before Ameritech has met the conditions in ¶11 of the proposed order. In that case, intraLATA toll dialing parity would come into effect before Ameritech commences interexchange service.

¹³The proposed order does not displace state regulation, however. (See Proposed Order, ¶ 3.) State regulators may choose to regulate arrangements even when consented to by the carriers involved.

In allowing paragraph 9(e) to be satisfied by consent of the other exchange carriers, we recognize that unequal bargaining power may lead a competitive exchange carrier to agree to unsatisfactory terms. That is precisely why the provisions of paragraph 9 are not a checklist that will lead automatically to Ameritech's entry into interexchange service. The ultimate issue will always be the competitive results of the negotiated arrangements, as tested against actual marketplace facts. (See Section III.B.) Thus, because the proposed order requires that the Department analyze market facts and assess competitive circumstances, the proposed order gives Ameritech the incentive to negotiate in good faith and arrive at a procompetitive agreement with competitive exchange carriers.

¹⁴Of course, the reasons advanced by a competing carrier as to why the proffered interconnection arrangements are inadequate may have a bearing on any assessment of competitive circumstances.

¹⁵See, e.g., *A Blueprint for Action*, *supra* note 1, Tab 3 at 5-19 (discussing shortcomings of interim number portability) [Appendix, Tab 1].

¹⁶The compliance plan, which deals principally with post-entry safeguards, is discussed in more detail in Section III.C, below.

¹⁷The Department is currently investigating claims that regulation and post-entry safeguards are sufficient to ensure that there is no substantial possibility that an RBOC could engage in anticompetitive conduct, without the market-opening measures contemplated in the proposed order, in connection with the Motion of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation to Vacate the Decree. (Bell Atlantic has since withdrawn from that motion.) Ameritech is not advancing that proposition at this time, however, and the proposed trial is not designed to test such claims.

¹⁸The staff of the Michigan PSC, in its comments on an earlier version of the proposal, urged the Department to include the Detroit and Lansing LATAs in the Trial Territory. Revised Comments of the Staff of the Michigan Public Service Commission (Mar. 22, 1995) [Appendix, Tab 15]. The Department does not believe this change to be appropriate, because it is too early to tell how widely different areas of the state will vary in the availability of competitive alternatives and the ability of such alternatives to guard against harm to competition in the interexchange market. We stress, however, that the modification provisions of the proposed order establish sufficient flexibility to deal appropriately with whatever competitive conditions should arise.

¹⁹The FCC's order removing structural separation requirements was vacated and remanded by the Ninth Circuit. *California v. FCC*, 39 F.3d 919 (9th Cir. 1994), cert. denied, 63 U.S.L.W. 3721 (U.S. April 3, 1995). Further proceedings on remand are pending at the FCC.

²⁰Even under the FCC's Computer Inquiry II approach, certain kinds of services can be shared between the interexchange subsidiary and other affiliates. These are enumerated in ¶ 20(g). To the extent that any such sharing is carried out in a way that harms competition, the Department and the Court retain the power to take corrective action under ¶ 15-16, as well as to take that fact into account in evaluating the progress of the trial under ¶ 18.

²¹The proposed order calls for "equivalent" rather than identical order, maintenance, and support systems, to account for the possibility that access to such systems may involve the use of different interfaces because of the different requirements of different carriers' computer systems and because of Ameritech's need to protect the security of its systems. The access must, however, be equivalently convenient; the provision would not be satisfied by providing electronic connections to Ameritech's interexchange subsidiary but only fax machines to its competitors.

²²Among the restrictions on access to customer information is a provision that the Ameritech interexchange subsidiary may not have access to customer proprietary network information ("CPNI") as defined by the FCC, except in the same manner that CPNI is available to unaffiliated carriers. This would mean, for example, that unlike the Ameritech local exchange operations, the Ameritech interexchange subsidiary would have to obtain the affirmative consent of the local exchange operations' customers in order to get local and intraLATA toll usage patterns of those customers. At one point, Ameritech expressed concern that this restriction would put it at a marketing disadvantage compared to AT&T, which could target the marketing of one-stop shopping services to its more lucrative interexchange customers, based on their long-distance

usage patterns, which would be available to AT&T without such affirmative consent because they would relate to services as to which AT&T was the subscribers' provider. Ameritech concluded, however, that it could overcome this disadvantage if it could start seeking such affirmative consent from Ameritech local exchange customers as soon as possible. Since nothing in the existing Decree would appear to prohibit the seeking of such consent before the trial begins or even before the proposed order is entered, so long as customers are not misled as to the actual extent of Ameritech's authority to offer interexchange service, Ameritech withdrew this concern.

²³In some cases, such as the provision of interexchange and intraLATA toll services by the interexchange subsidiary (¶¶ 41, 45) and the provision of Centrex service to business customers (¶ 43), the proposed order provides for the offering of such services immediately upon the commencement of Ameritech's authority to offer interexchange telecommunications, because other carriers are already offering such services on a "one-stop-shopping" basis.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I ask unanimous consent that my remarks appear as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRADE POLICY

Mr. DORGAN. Madam President, I was very interested to hear the comments by Senator BYRD and Senator HOLLINGS today on the issue of trade. I think the three of us, with perhaps one or two others, are the only Members of the Senate who come and speak about the issue of trade. There is almost a conspiracy of silence in this Senate, in the entire Congress, and in this town, especially, on the issue of trade.

U.S. TRADE POLICY

We have the largest trade deficit in human history in this country now. We have a lot of hand wringing about the fiscal policy deficits, and they are dangerous and troublesome. We must deal with them. But no one speaks about the trade deficit and what causes it and what it means for our country. I hope one day soon that will change, because today's trade deficits will be repaid in the future with a lower standard of living in this country. We must get rid of these terrible, terrible trade deficits that are going to ruin this country's future.

Beginning on Friday this week, I am going to make about four presentations on the floor of the Senate over the period of the next couple of weeks, talking about the last 50 years. I want to start with post-Second World War trade strategy, which was really foreign policy, in which we were linked to other countries try to strengthen others around the world who had been suffering from the ravages of war. During that period of time, there was general expansion in world trade and general expansion of prosperity. Our allies prospered and so did we. We prospered in output. We saw higher wages. Our country generally, in the first 25 years, did well.

You look at the last 25 years and you will see, even as others began to compete with us very aggressively, we

clung to the same strategy. And what have we seen for it? We have seen a lower standard of living in this country generally, lower wages, and we have seen American jobs move overseas. That has been the result of this strategy. It is a strategy that hurts this country, and it is a strategy that must be changed.

We must get to a point where, if you close your eyes and simply listen, you can hear a difference between what people are saying on trade policy. You cannot anymore. There is no difference between what the Republicans say and what the Democrats say on trade. It sounds all the same to me.

Oh, Senator HOLLINGS sounds different to me because he is talking a different kind of strategy—plus he comes from a different part of the country. And Senator BYRD sounds different because he is talking about trade in a completely different way. But it is very unusual, and we need to create a national debate on this subject. We need to do it soon. The merchandise trade deficit last year was \$166 billion, the highest in history. Jobs left our country. Wages in this country were down.

Our current strategy says to American workers they can now compete with 2 or 3 billion others in the world, some of whom are willing to work for 12 cents an hour at the age of 12, for 12 hours a day. That ought not be the competition for the American worker. No one should produce a product that enters our marketplace under those conditions. And we must, posthaste, create a national debate about trade strategy, looking out for the best interests of this country.

I do not want a trade war. That does not serve anybody's interests. But I do want our country to stand up for its own economic interests for a change. Can we not, for a change, just for once, have a trade negotiation that we win, or at least come out even on? We lose every time we pull up to the table. We lost on NAFTA; we lost on Canada; we lost on GATT. We can go all the way back. It is time for this country to stand up for its economic interests.

MEDICARE AND TAX CUTS FOR THE RICH

Mr. DORGAN. I did not come to speak about trade, but I wanted to say something about what I saw this weekend—the Speaker of the House, the majority leader of the Senate, and now today I see the chairman of the Ways and Means Committee of the other body, all talking about Medicare.

It was interesting to me. I was thinking about these old movies I used to see when I was a kid, when all these cowboys would whistle when they go into a box canyon and then when the trouble would start, they would start jumping off their horses, trying to find a place to hide.

This is kind of a box canyon we have created in the last couple of months,

just riding in, whistling all the way, with the Contract With America, saying: Do you know what we can do? We can balance the Federal budget easily. We can do it before lunch. We will not even break a sweat. We will just change the U.S. Constitution and use \$1.3 trillion in the Social Security trust funds to offset against other revenues. We will balance the budget.

Plus we will do more than that. We will promise you American people we will not only balance the budget, we will give you a tax cut. In fact, we will call it a middle-class tax cut. We will do all of that, and we will tame this Medicare and Medicaid problem. We will cut money out of Medicare and Medicaid and we will solve that problem.

Then what happened? I think this weekend somehow these folks that rode into this box canyon understood the trouble they were in because, all of a sudden, the three dismounted and are scurrying in every direction.

I noticed today the Ways and Means Committee in the House was asking the administration to give them advice on how to solve the Medicare and Medicaid problem. They were not asking for any advice when they talked about the tax cut bill or the welfare reform bill that they moved through there quickly. They did not need any advice then. But all of a sudden they find out their promises are coming home to pinch. What they are worried about is that the American people might see what has been created—a promise of tax cuts for the middle class that looks like this:

This is the middle-class tax cut for those middle-class folks who live on Rodeo Drive. At least it must be Rodeo Drive because how else could you explain this chart? Who benefits from the tax bill? If you earn \$30,000 or below, as an average family, you get an enormous tax cut, \$134 a year. If your income is \$200,000 or above as an American family, you get a check back for your tax bill, a tax cut of \$11,266.

I was on a radio talk show with a conservative host, somebody who believes in all of this, who said, "Well, Senator DORGAN, what do you think about this middle-income tax cut?" I said, "What middle-income tax cut? What on Earth are you talking about?" He said, "The one just passed by the House of Representatives which benefits the middle-income folks." I said, "Really? Do you understand it? Have you really seen the results of it?" I said, "If you are over \$200,000, you get a \$11,200 tax break; \$30,000 or under, you get \$134. That is middle income?" Not in my hometown, it is not middle income.

But you know what has happened here. You know what the box canyon is—people are going to look and say, "Gee. Now if we have a big deficit and we have economic troubles in our country and we are trying to reduce the budget deficit and give a \$11,200 tax cut to families over \$200,000 a year, and

then the same folks who want to do it come along and say, "Do you know how we can pay for all of this? We can take a \$300 billion or \$400 billion out of Medicare and Medicaid. That is how we can pay for this."

All of a sudden I think a light bulb went on in the minds of some of these architects who said maybe we will get blamed for taking money away from people who are elderly or poor for their health care and using it to give a tax cut to those who are wealthy. Will not that be unfair for those of us who know the facts to stand up and talk about those folks? So all of a sudden we have seen in the last 48 hours, 72 hours, folks scurrying around town here saying, "Wait a second. Do not be so quick on Medicare and Medicaid. That is not really what we meant. That is not what we said."

We do not really know what they mean because those same folks who were out here in an enormous hurry to change the U.S. Constitution were not in a very big hurry on April 1 when the law said they were required to bring a budget to the floor of the Senate.

You see, you cannot change the Constitution and alter the deficit. If you change the Constitution with a constitutional amendment to require a balanced budget, you will not change the deficit by one nickel. What changes the budget deficit is when we bring a budget to the floor and make decisions.

They were in a big hurry to change the Constitution, but somehow this enormous need to move quickly has left them. Now they simply cannot seem to get over here. The law says April 1 they should be here with their budget. Then it says by April 15 we should have a conference report. Well, April 1 came and went. April 15 is here and gone. May 1 is here and gone. No budget. But we have tax cuts for the big folks.

If you make half a million dollars sitting there clipping coupons, using that channel changer to search to see what entertainment is on tonight for you, boy, you can look at this Congress, and, say, "What a Congress. What a bunch of folks those folks are. \$11,000 I have to spend. I can buy some more radio equipment. In fact, I can probably lease a Rolls Royce for 6 or 8 months, or lease a Mercedes Benz." Could you not with \$11,000 lease a Mercedes Benz for a year? Then you say to the person that is making \$20,000 or \$25,000 a year, maybe a hubcap. Maybe you will not be able to afford the hubcap. Maybe a radiator cap, but certainly not the Mercedes Benz we are going to give to the big folks.

Here we are. No budget; got a tax cut, not middle-class tax cut, a tax cut that gives the bulk of the benefits to the wealthiest. It is the old cake and crumbs theory. Give the cake to the big shots. Leave a few crumbs to the rest and say everybody got something.

It is like somebody going to Camden Yards and saying, "You know something. I am going to give away \$100